Federal Court Cour fédérale

Date: 20240515

Docket: T-2268-23

Citation: 2024 FC 744

Ottawa, Ontario, May 15, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

RAKHI KATOCH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a Veterinary Pathologist at the Canadian Food Inspection Agency [CFIA] and a member of the Professional Institute of the Public Service of Canada [Institute]. The Applicant initiated a workplace harassment complaint under CFIA's Work Place Harassment and Violence Prevention Policy and pursuant to section 15 of the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130 [*Regulations*] under the *Canada Labour Code*, RSC, 1985, c L-2 [*Code*] by filing a notice of occurrence alleging eleven incidents of workplace harassment.

[2] The CFIA retained an investigator to determine whether the occurrences met the definition of "work place harassment and violence" in the *Code*, and to determine the root causes or circumstances that contributed to the occurrences. In their report, the investigator concluded that none of the eleven alleged incidents met the definition of work place harassment and violence. The investigator made six recommendations to the CFIA and identified five systemic root factors as having contributed to the occurrences in the workplace.

[3] Following the release of the investigator's report, the Applicant filed an individual grievance under subsection 208(1) of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [*FPSLRA*]. The Applicant did not grieve the eleven alleged incidents, but rather the investigation itself, which the Applicant alleged was flawed and did not comply with CFIA's Policy, the *Code*, the *Regulations* and the collective agreement between the Institute and the CFIA. The Applicant also claimed that the investigator failed to "act fairly and in accordance with the rules of natural justice" and to conduct the investigation in a "fair, balanced, unbiased or otherwise appropriate way". In her grievance, the Applicant requested the following relief: (a) that the investigation report be declared null and void; (b) that the CFIA appoint an independent third party to conduct a full investigation in a fair, balanced, unbiased and appropriate way; (c) that the CFIA take all the necessary steps to remedy the situation; (d) that she "be made whole"; and (e) any other relief necessary to remedy the situation.

[4] On September 12, 2023, the CFIA rejected the Applicant's grievance and provided the following reasons for their decision:

> According to your grievance, you have concerns with the investigation process and/or the final report for the notice of occurrence you filled. In accordance with Article 208(2) of the Federal Public Service [*sic*] Labour

> Relations Act, "An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament." As your Notice of Occurrence was filed and the investigation was conducted pursuant to the Workplace Harassment and Violence Regulations under the Canada Labour Code, you cannot file a grievance to contest the process or the outcome. The manner in which to contest the process is via Judicial Review in Federal Court. Therefore your grievance cannot be accepted.

[5] The Institute responded to the CFIA on behalf of the Applicant seeking clarity as to the rationale for the decision and to advise that they were not open to withdrawing the grievance and proceeding by way of judicial review. The Institute requested that the matter be transmitted to the third and final level of the grievance procedure and that a hearing be scheduled. That same day, CFIA responded to reaffirm that the employer had not accepted the grievance and would not be scheduling a hearing.

[6] On this application, the Applicant seeks judicial review of the CFIA's decision to refuse to accept her grievance on the basis of subsection 208(2) of the *FPSLRA*. The Applicant asserts that: (a) the remedies under the *Regulations* do not constitute an "administrative procedure for redress…under any Act of Parliament," within the meaning of subsection 208(2) of the *FPSLRA*, such that it prevented the Applicant from bringing a grievance in this case; and (b) in the alternative, the CFIA failed to provide sufficient reasons.

[7] Section 208 of the *FPSLRA* addresses the right of employees to present individual grievances and subsection 208(2) sets out the following limitation thereto:

Individual Grievances **Presentation** **Right of employee** **208 (1)** Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved	**Griefs individuels** **Présentation** **Droit du fonctionnaire** **208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :
(a) by the interpretation or application, in respect of the employee, of	**a)** par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	**(i)** soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	**(ii)** soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	**b)** par suite de tout fait portant atteinte à ses conditions d'emploi.
Limitation **(2)** An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the Canadian Human Rights Act.	**Réserve** **(2)** Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la Loi canadienne sur les droits de la personne.

[8] The Federal Court of Appeal in *Canada (Attorney General) v Boutilier*, 1999 CanLII 9397 (FCA), [2000] 3 FC 27, considered the predecessor provision to subsection 208(2) of the *FPSLRA* and held that an "administrative procedure for redress" must provide a "real remedy" to the grievor. Although the alternative administrative procedure need not be equivalent or provide a better remedy, it must deal "meaningfully and effectively with the substance of the employee's grievance". However, differences in the remedy, even if it is a "lesser remedy," do not change it into a non-remedy [see *Boutilier*, *supra* at para 23].

[9] Before subsection 208(2) can apply to oust an individual grievance from being presented under subsection 208(1) of the *FPSLRA*, the administrative redress in question must provide "real redress" that could be of "personal benefit" to the grievor [see *Johal v Canada Revenue Agency*, 2009 FCA 276 at para 35; *Byers Transport Ltd v Kosanovich*, 1995 CanLII 3515 (FCA), [1995] 3 FC 354 at p 378; *Chickoski v Canada (Attorney General)*, 2017 FC 772 at para 81 [*Chickoski*]].

[10] The sole issue for determination on this application for judicial review is whether the decision to deny the grievance pursuant to subsection 208(2) of the *FPSLRA* was reasonable. The parties agree, and I concur, that the decision is reviewable on a standard of reasonableness [see *Burlacu v Canada (Attorney General)*, 2022 FC 1112 at para 18; *Chickoski*, *supra* at para 30].

[11] The parties focused their submissions on the proper interpretation of subsection 208(2) of the *FPSLRA* and whether the remedies under the *Regulations* constitute an "administrative procedure for redress…under any Act of Parliament," with the Respondent advising the Court that the parties were looking for guidance from the Court on this issue. However, it is not the role of the Court on an application for judicial review to provide guidance to the parties by stepping in and deciding the underlying issue. Rather, the Court's role is limited to reviewing the decision made by the CFIA to determine if it is reasonable.

[12] While the Applicant raised the adequacy of the CFIA's reasons as an alternative argument, the reasons for decision are the starting point for the Court's examination of the reasonableness of the decision. As stated by the Supreme Court of Canada in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paragraph 8, when reviewing for reasonableness, the Court must

take a “reasons first” approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. The reasons are the primary mechanism by which administrative decision-makers show that their decisions are reasonable [see *Mason*, *supra* at para 59, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 81]. It is therefore not enough for the outcome of the decision to be *justifiable*—the decision must also be *justified* by way of the reasons provided by the decision-maker [see *Mason*, *supra* at para 59, citing *Vavilov*, *supra* at para 86]. When the reasons fail to provide a transparent and intelligible justification for the result, that decision will be unreasonable.

[13] The decision provided by the CFIA to the Applicant contains mere conclusory statements, without any explanation or analysis as to how the remedies under the *Code* deal meaningfully and effectively with the substance of the Applicant’s grievance, or how the administrative procedure is capable of producing real redress that could be of personal benefit to the Applicant. The reasons simply do not provide the Court with an ability to understand how the CFIA reached its conclusion that subsection 208(2) applied to prevent the Applicant from filing her grievance. As a result, I find that the reasons fail to provide a transparent and intelligible justification for the result, which renders the CFIA’s decision unreasonable.

[14] Accordingly, the application for judicial review shall be granted. The decision of the CFIA is set aside and the matter is remitted for redetermination.

[15] At the hearing, the parties confirmed that neither party was seeking their costs of this application. As such, no award of costs will be made. The parties further confirmed that they are

in agreement that the style of cause should be amended to name the Attorney General of Canada as the sole respondent, which amendment shall be made with immediate effect.

JUDGMENT in T-2268-23

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to name the Attorney General of Canada as respondent.

2. The application for judicial review is granted, the decision is set aside and the matter is remitted for redetermination.

3. There shall be no award of costs.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2268-23
STYLE OF CAUSE:	RAKHI KATOCH v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 13, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AYLEN J.
DATED:	MAY 15, 2024

APPEARANCES:

Colleen Bauman	FOR THE APPLICANT
Brenden Carruthers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Goldblatt Partners Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT